

To: Hellyer, Yvette[Hellyer.Yvette@epa.gov]
From: Schulze, Chad
Sent: Tue 5/10/2016 3:24:50 PM
Subject: RE: FYI - coming up again on the black flag referral

ENFORCEMENT CONFIDENTIAL

Oh Boy ... Thanks Yvette ...

Can you provide me copies of the Advisory Letters (ADL) you sent to Black Flag and StarBar?

One clarifying point ...

Ex. 7(e) Enforcement Process

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It took a while to find the time to conduct inspections looking for these products so we didn't get on out there till February 2016. During that month, we conducted 3 inspections and did not find the products ... however, I was out of the country and did not participate. We plan to conduct more but I'm low on staff and have very little time.

Once you provide the Advisory Letters I will send an FYI to our states to look for these products during their routine MPI's. I assume it is ok to share the ADL with them, yes?

Thank you Yvette ... sorry for the slow response ...

Sincerely,

Chad

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From: Hellyer, Yvette
Sent: Friday, May 06, 2016 2:19 PM
To: Schulze, Chad <Schulze.Chad@epa.gov>
Subject: FYI - coming up again on the black flag referral

ENFORCEMENT SENSITIVE

Hi Chad,

I know how busy you have been with other enforcement activities, but I wanted to give you a heads with the latest activities relating to the Sterling International Company tip and complaints in an effort to get their competitor companies' products off the market shelves. Sterling's products, called Rescue, have been registered, and Sterling feels other companies, like Black Flag and StarBar, have copied their label graphics and statements, without registering the products. They have hired an ex-Washington lobbyist named Mark Himmelstein to help them bring their concerns to congressional, senate and EPA management levels. They have also contacted other state lead agencies from Washington State, Oregon, Idaho and California.

Black Flag is probably their number one competitor supposedly selling/distributing fly traps and insect lures/traps with AIs that require registration. Black Flag has been represented by an attorney, Tracy Heinzman, in an association of other companies with similar product. On behalf of BF and others, Ms. Heinzman is claiming OPP has changed its position about requiring registration for these AIs in question and should have notified registrants of this change. If OPP agreed, then Ms. Heinzman felt it necessary to let her company-members be given a phase-in period to get registrations done on a fast-track while allowing the continued sale/distribution of these products.

OPP (Linda Hollis) has repeated stated that the Als in question have always required registration, have never been exempt, and thus the answer to their question, this is not a change in the agency's position. Companies that continue to sell/distributor can be found in violation.

To further assist OPP, HQ issued Black Flag and StarBar companies an Advisory Letter about the requirements of registration for the products they sold. As a results, the StarBar company contacted OPP and immediately proceeded to get their products registered. Black Flag has not taken that approach. Sterling now claims they lost a contract with a big box store because they preferred to buy from Black Flag (because of name recognition) despite the products not being registered. This was big blow to their sales/distribution.

Now a recent letter to OCSPP from Sterling, OPP is debriefing Jim Jones (see below). We responded to OPP with the latest information we know (see further down in the email chain). If you haven't yet, you may want to consider giving copies of the advisory letters to your states and ask state inspectors conducting marketplace inspections to consider also investigating these products during the 2016 season. I recommend you keep any and all correspondence on your efforts because I expect we will be expected to report back. Having dates and names of who we contacted and coordinated with will help since these are fly traps and insect lures; and not RUPs or other high-tox, high volume products that we tend to run initiatives for. Inspectors already scheduled to conduct inspections is a reasonable and doable level of effort warranted for this matter. If you have questions or in need of further of further assistance, please let me know. I know OPP will make themselves available for further assistance/support should the region or states need it.

Sorry for the long email

Thanks

Yvette P. Hellyer

OECA/OCE/WCED

Pesticide and Tanks Enforcement Branch

202/564-4033

From: Miles, James
Sent: Thursday, May 05, 2016 10:12 AM
To: Hollis, Linda <Hollis.Linda@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>
Subject: RE: Our conversation with black flag

Yikes... Good luck!

From: Hollis, Linda
Sent: Thursday, May 05, 2016 10:06 AM
To: Miles, James <miles.james@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>
Subject: RE: Our conversation with black flag

Perhaps. Heads up. We are meeting today with the Assistant Administrator Jim Jones – we are in receipt of a letter from Sterling International (the competitor company whose products are legally sold and federally registered. I am preparing the overview.

From: Miles, James
Sent: Thursday, May 05, 2016 10:03 AM
To: Hollis, Linda <Hollis.Linda@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>
Subject: RE: Our conversation with black flag

By the way, I hope this isn't an indication that we might get another congressional ☺

From: Hollis, Linda
Sent: Thursday, May 05, 2016 9:50 AM
To: O'Meara, Nidhi <Omeara.Nidhi@epa.gov>; Miles, James <miles.james@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>

Subject: RE: Our conversation with black flag

And I am sooooooooooooooooooooo glad he did. Extremely helpful indeed.

From: O'Meara, Nidhi
Sent: Thursday, May 05, 2016 9:40 AM
To: Miles, James <miles.james@epa.gov>; Hollis, Linda <Hollis.Linda@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Subject: RE: Our conversation with black flag

Linda – I told you James would be reading his emails! Good luck today. Thanks NKO

From: Miles, James
Sent: Thursday, May 05, 2016 8:25 AM
To: Hollis, Linda <Hollis.Linda@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>
Subject: RE: Our conversation with black flag

Hi Linda,

I'm on work travel with Yvette who helped draft this email in response to your question about progress on Black Flag products.

Following the Advisory Letters sent to Black Flag, WCED sent a formal referral to our Region 10 pesticide enforcement program for follow-up.

The Region 10 program has notified their states, which is where "sightings" of Black Flag products in questions have been previously found in the marketplace. The pesticide state agencies have been made aware that products containing A.I.'s like those in Black Flag products may not be in compliance. Periodically, we ask Region 10 to follow-up with their states. The last

request for information had not produced any marketplace inspections revealing Black Flag products.

As you may know, we also have received periodic request for the status of enforcement against Black Flag from Senate EPW staff. We have informed them of the Region 10 referral. Because this matter is being handled at the state level, we were not able to provide further information at that time.

With regards to Tracy Heinzman's question about whether OPP will provide notice to the industry of EPA's "change in position" with regard to these products, perhaps OPP can consider adding these types of products as being in noncompliance to the website on epa.gov about illegal pesticides in the marketplace. Please contact Yvette if you would like to discuss this matter or proposed action further.

From: Hollis, Linda
Sent: Thursday, May 05, 2016 8:55 AM
To: O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>; Miles, James <miles.james@epa.gov>
Subject: RE: Our conversation with black flag

Nidhi,

What ever happened with this case? Can you provide me with a response. Actually, I am looking for immediate feedback. Specifically, after the notice was issued, are the products still being sold?

From: O'Meara, Nidhi
Sent: Tuesday, April 21, 2015 4:02 PM
To: Hollis, Linda <Hollis.Linda@epa.gov>
Cc: Hellyer, Yvette <Hellyer.Yvette@epa.gov>; McNally, Robert <McNally.Robert@epa.gov>; Leahy, John <Leahy.John@epa.gov>; Leahy, John <Leahy.John@epa.gov>; Miles, James <miles.james@epa.gov>; O'Meara, Nidhi <Omeara.Nidhi@epa.gov>
Subject: RE: Our conversation with black flag

Thanks Linda – Could I please bother for the email you are referring to (ie “no” to existing stocks) – I know you sent it to me but I cannot find it. Please keep us posted if things develop – we will do the same. NKO

From: Hollis, Linda
Sent: Tuesday, April 21, 2015 2:57 PM
To: O'Meara, Nidhi
Cc: Hellyer, Yvette; McNally, Robert; Leahy, John; Leahy, John; Miles, James
Subject: FW: Our conversation with black flag

Nidhi,

Thank you for following up. I am not surprised that Tracy Heinzman wants to continue dialogue with OPP. In answer to your question regarding a formal response to the existing stocks question, the answer is no, not by way of a formal letter. However, in the email that I provided to you, we acknowledged that we would not entertain that option. I suppose an “official no” may make her inquiries cease.

Regarding her suggestion about “ if OPP was planning to post some sort of notice so the regulated community is aware that registration for these types of products is required”, she has asked us that before. I am not sure of what our response was. I do recall that we stated to her that we would like to meet with this “group” of companies that are affected by our decisions since she indicated that she was sort of the spokesperson for all of them. That has yet to occur.

Linda

From: O'Meara, Nidhi
Sent: Tuesday, April 21, 2015 3:35 PM
To: Hollis, Linda
Cc: Miles, James; Hellyer, Yvette; O'Meara, Nidhi

Subject: Our conversation with black flag

Hi Linda – I wanted to follow up on our conversations last week and update you on this matter.

Attached are the advisory letters I mentioned last week. The letter to Black Flag prompted a call from its attorney, Tracy Heinzman. Tracy is the same person who was communicating with you regarding the indole and heptyl butyrate products, possible registration and existing stocks questions.

We spoke with Tracey today (James Miles, Yvette Hellyer and myself). She wanted to know which products we were referring to despite the fact that we identified the products in the advisory letter. She said she was confused because black flag has so many products on the market. I told her we were concerned with any products that were unregistered but contained the active ingredients indole and heptyl butyrate.

She indicated that her client might want to reach out to OPP to continue discussions about if these products really need to be registered. She made mention of a letter she discovered (after she had already gotten an answer from OPP - your March, 2014 response) indicating that EPA did not previously believe that products containing these ingredients need to be registered. I think the letter was dated in the late 90s but I have no further information beyond that. She also made mention of the fact that OPP felt that even flour would not fall under the 152.25 food exemption.

She said Black Flag may want to revisit all of this with OPP.

She told us that she never got an answer on her existing stocks question. Did you or Chris ever respond to her formally – I thought you did but I cannot seem to locate it now. I did tell her that the existing stocks provision would not apply to Black Flag's situation. She switched gears and said that because EPA changed its position, OPP should as a policy matter give the industry an interim pass because it was unfair.

Finally – she asked if OPP was planning to post some sort of notice so the regulated community

is aware that registration for these types of products is required. I told I did not know.

Is that something OPP would consider putting on its website – ie that indole and heptyl butyrate are active ingredients. I suppose this might only be justified if in fact OPP did change course on the need for registration over the years. I am not sure if that is in fact the case.

Hope you find this helpful. Thanks NKO